IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.7/2003

M/s. Menezes Cosmetics Pvt. Ltd.,
having its Registered Office at
CMM Building., Rua de Ourem,
Panaji, Goa, through their Attorney
Mr. Prakash A. Lotlikar, residing at
"PUSHPA KUNJ" Opposite Durga
Petrol Pump, Fatora, Margao, Goa. ... Petitioners.

Vs.

M/s. Ascent Laboratories Pvt. Ltd.,
Plot No.258 Road, No.15,
Jawahar Nagar, Goregaon (W),
Mumbai 400 062
through its Directors
Mr. Mahesh Kamath and
Mrs. Jayanti Kamath. .... Respondents.

Mr. S.M. Singbal, Advocate for the applicant.

CORAM : F.I. REBELLO, J.

DATE : JULY 25, 2003.

ORAL JUDGMENT:

Notice was issued to the respondents. The record shows that the respondents could not be served, as per the Bailiff's remark that the respondents have no fixed timing of coming to the office. The petitioners have placed on record a private notice served by courier. The Apex Court in the case of Konkan Railway Corporation Ltd., and another vs. Rani Construction Pvt. Ltd., (2002) 2 SCCs 388, has held there is no requirement that notices must be served on the respondent. However, in order to give proper effect to

the arbitral clause, the respondent be served. In the instant case, the petitioner appointed Advocate Shri P.R. Namjoshi as the Arbitrator. Shri Shailesh Shah is appointed as the Second Arbitrator. The two Arbitrator to appoint the Third Arbitrator. In the event the respondents do not bear the proportionate costs of the arbitration, the petitioner initially to bear the costs of the arbitration. Costs of the arbitration to be made part of the Award.

2. All disputes and claims which are subject-matter of the present application, are referred to arbitration of the Arbitral Tribunal as constituted. The Arbitral Tribunal to proceed only after giving notice to the respondents according to law. Application stands disposed of accordingly.

F.I. REBELLO, J.

ssm.